ARY
COURT, U. S.

Office-Supreme Court, U.S.
FILED
NOV 20 1964
JOHN F. DAVIS, CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1964

No. 557

GRANT THORN, GENEVIEVE U. THORN; GRANT THORN, GENEVIEVE U. THORN and SAMUEL UHLFELDER, Directors in Trust for Stockholders, Members and Creditors of Eastern Tar Products Corporation; GRANT THORN, GENEVIEVE U. THORN and SAMUEL UHLFELDER, Directors in Trust for Stockholders, Members and Creditors of Eastern Road Materials Corporation,

*Appellants,*

vs.

HARRISBURG TRUST COMPANY,

*Appellee.*

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

## APPELLANT'S BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS FOR WANT OF JURISDICTION

HARRY S. SHAPIRO,
253 Equitable Building
Baltimore, Maryland 21202
*Attorney for Appellants*

King Bros., Inc.; Printers, 208 N. Calvert St., Balto., Md. (11-17-64—50)

## APPELLANT'S BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS FOR WANT OF JURISDICTION

The Appellants believe that they have briefly and succinctly set forth grounds for jurisdiction of this Appeal in their Jurisdictional Statement heretofore filed in this matter. Therefore, it is not our purpose to be repetitious herein.

However, the Appellee's angry reference in their Motion to Dismiss to the "tortured course of this litigation" needs some response. The record in this case clearly reveals that if this case had been delayed by the Appellants herein, and the Plaintiffs below, it had also been delayed by the Appellee herein, the Defendant below, in that said Defendant had never asked for a trial date and never attempted to take the deposition of any of the Plaintiffs in this case other than the Plaintiff, Grant Thorn, who had been physically disabled.

With reference to the procedure followed under this Appeal, counsel for the Appellants has attempted to follow instructions given by the experienced clerk of the United States Court of Appeals for the Third Circuit. If any technicality has not been followed, and the Appellants say that the Appellee is in error in this objection, the Appellee has failed to show that such omission has been prejudicial to it in this case.

The Apellee, in its Motion to Dismiss, has laid great stress upon sections of the United States Code. However, the sections of the law, relied upon by the Appellants for jurisdiction in this case in the Supreme Court, are not in the United States Code but are in the Statutes at Large of the Acts of Congress of the United States.

The Appellee has stated that it does not believe that the questions presented by this Appeal are substantial. However, we believe that due process of law under the Constitu-

tion of these United States is a sacred liberty worth protecting and worth fighting for.

The Appellee has stated that the Appellant, Grant Thorn, "offered no proof—not even a doctor's affidavit—either time"; but this allegation is not supported by the real facts.

Finally, the Appellee has argued that the Appellants have raised the question of due process of law for the first time in this Court. However, this is not true. Although present counsel for the Appellants was not present for any hearings prior to the last hearing before the United States Court of Appeals for the Third Circuit, the issue involving the judgment by default against all of the Plaintiffs as a result of one of the Plaintiff's failure to appear for a deposition was argued strenuously by this writer at said hearing although not treated with great detail in the brief. In addition, this problem was treated by the lower courts repeatedly and their ultimate decision did, in fact, bar all of the Plaintiffs from their day in court because of the alleged default of one of the Plaintiffs.

We firmly and sincerely believe that justice under the Constitution of the United States of America is crying out for consideration of this case by the Supreme Court.

Respectfully submitted,

HARRY S. SHAPIRO
*Attorney for Appellants-Plaintiffs*
253 Equitable Building
Baltimore, Maryland 21202
SA 7-4079

MICRO CARD 22
TRADE MARK ®

MATTHEW BENDER & COMPANY

PC 69

5 69

microcard